

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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|-----------------------|---|----------------------|
| Vivian Bert, et al, | : | Case No. 1:02-cv-467 |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| AK Steel Corporation, | : | |
| | : | |
| Defendant. | : | |

ORDER

Before the Court is Defendant's motion to dismiss the claims of Plaintiffs Dwight Lewis and Tiffany Jackson. (Doc. 127) Lewis and Jackson are two of the sixteen African-American plaintiffs in this case. They each are members of the "testing" subclass this Court previously certified under Rule 23, and allege that AK Steel's pre-employment test has a disparate impact upon African-American applicants. Neither Lewis nor Jackson have been appointed to represent the Ashland subclass of which they are members.

Neither Lewis nor Jackson has responded to properly served written discovery from AK Steel, despite many months since the discovery was served. Their depositions were noticed by agreement with Plaintiffs' counsel, and neither individual appeared. Plaintiffs state that Lewis has not been heard from for some time, and counsel's efforts to contact him have been unsuccessful. Jackson was reached by telephone in June, and

agreed to a deposition date in August. Jackson called Plaintiffs' counsel the day before that deposition to confirm that she would appear. Nevertheless, she did not appear and counsel has not heard from her since then. (See Doc. 130, Plaintiffs' Response.)

The Court concludes that these two Plaintiffs have failed to prosecute their claims. Neither Plaintiff has offered any reason that might excuse their utter disregard of their responsibilities as litigants. The dismissal of these Plaintiffs will not affect the class claims, as neither individual is a representative for the Ashland subclass, and adequate representation for that subclass has already been determined.

Therefore, the Court dismisses the claims of Dwight Lewis and Tiffany Jackson pursuant to Fed. R. Civ. P. 41(b).

SO ORDERED.

DATED: November 20, 2007

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Court